

ANALYSIS BY THE LEGISLATIVE ANALYST

**Proposition 62
Death Penalty. Initiative Statute.**

BACKGROUND

Murder Punishable by Death

First degree murder is generally defined as the unlawful killing of a human being that (1) is deliberate and premeditated or (2) takes place while certain other crimes are committed, such as kidnapping. It is punishable by a life sentence in state prison with the possibility of being released by the state parole board after a minimum of 25 years. However, current state law makes first degree murder punishable by death or life imprisonment without the possibility of parole when "special circumstances" of the crime have been charged and proven in court. Existing state law identifies a number of special circumstances that can be charged, such as in cases when the murder was carried out for financial gain or when more than one murder was committed.

Death Penalty Proceedings

Death Penalty Trials Can Consist of Two Phases. The first phase of a murder trial where the prosecutor seeks a death sentence involves determining whether the defendant is guilty of murder and any special circumstances. If the defendant is found guilty and a special circumstance is proven, the second phase involves determining whether the death penalty or life without the possibility of parole should be imposed. These murder trials result in costs to the state trial courts. In addition, counties incur costs for the prosecution of these individuals as well as the defense of individuals who cannot afford legal representation. Since the current death

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penalty law was enacted in California in 1978, 930 individuals have received a death sentence. In recent years, an average of about 20 individuals annually have received death sentences.

Legal Challenges to Death Sentences. Under current state law, death penalty verdicts are automatically appealed to the California Supreme Court. In these “direct appeals,” the defendants’ attorneys argue that violations of state law or federal constitutional law took place during the trial, such as evidence improperly being included or excluded from the trial. If the California Supreme Court confirms the conviction and death sentence, the defendant can ask the U.S. Supreme Court to review the decision. In addition to direct appeals, death penalty cases ordinarily involve extensive legal challenges in both state and federal courts. These challenges, which are commonly referred to as “habeas corpus” petitions, involve factors of the case that are different from those considered in direct appeals (such as the claim that the defendant’s attorney was ineffective). All of these legal challenges—measured from when the individual receives a death sentence to when the individual has completed all state and federal legal challenge proceedings—can take a couple of decades to complete in California.

The state currently spends about \$55 million annually on the legal challenges that follow death sentences. This funding supports the California Supreme Court as well as attorneys employed by the state Department of Justice who seek to uphold death sentences while cases are being challenged in the courts. In addition, it also supports various state agencies that are tasked with providing representation to individuals who have received a sentence of death but cannot afford legal representation.

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Implementation of the Death Penalty

Housing of Condemned Inmates. As of April 2016, of the 930 individuals who received a death sentence since 1978, 15 have been executed, 103 have died prior to being executed, 64 have had their sentences reduced by the courts, and 748 are in state prison with death sentences. The vast majority of the 748 condemned inmates are at various stages of the direct appeal or habeas corpus petition process. Condemned male inmates generally are required to be housed at San Quentin State Prison (on death row), while condemned female inmates are housed at the Central California Women's Facility in Chowchilla. The state currently has various security regulations and procedures that result in increased security costs for these inmates. For example, inmates under a death sentence generally are handcuffed and escorted at all times by one or two officers while outside their cells. In addition, unlike most offenders, condemned inmates are currently required to be placed in separate cells.

Executions Currently Halted by Courts. The state uses lethal injection to execute condemned inmates. Because of legal issues surrounding the state's lethal injection procedures, executions have not taken place since 2006. The state is currently in the process of developing procedures to allow for executions to resume.

PROPOSAL

Elimination of Death Penalty for First Degree Murder. Under this measure, no offender could be sentenced to death by the state for first degree murder. Instead, the most serious penalty available would be a prison term of life without the possibility of being released by the state parole board. (There is another measure on this ballot—Proposition 66—that would maintain the death penalty but seeks to shorten the time that the legal challenges to death sentences take.)

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Resentencing of Inmates With Death Sentences to Life Without the Possibility of Parole.

The measure also specifies that offenders currently sentenced to death would not be executed and instead would be resentenced to a prison term of life without the possibility of parole. This measure also allows the California Supreme Court to transfer all of its existing death penalty direct appeals and habeas corpus petitions to the state's Courts of Appeal or trial courts. These courts would resolve any remaining issues unrelated to the death sentence—such as claims of innocence.

Inmate Work and Payments to Crime Victim Requirements. Current state law generally requires that inmates—including murderers—work while they are in prison. State prison regulations allow for some exceptions to these work requirements, such as for inmates who pose too great a security risk to participate in work programs. In addition, inmates may be required by the courts to make payments to victims of crime. This measure specifies that every person found guilty of murder must work while in state prison and have their pay deducted for any debts they owe to victims of crime, subject to state regulations. Because the measure does not change state regulations, existing prison practices related to inmate work requirements would not necessarily be changed. In addition, the measure increases from 50 percent to 60 percent the maximum amount that may be deducted from the wages of inmates sentenced to life without the possibility of parole for any debts owed to victims of crime. This provision would also apply to individuals who are resentenced under the measure from death to life without the possibility of parole.

FISCAL EFFECTS

The measure would have a number of fiscal effects on the state and local governments. The major fiscal effects of the measure are discussed below.

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Murder Trials

Court Proceedings. This measure would reduce state and county costs associated with some murder cases that would otherwise have been eligible for the death penalty under current law. These cases would typically be less expensive if the death penalty was no longer an option, for two primary reasons. First, the duration of some trials would be shortened. This is because there would no longer be a separate phase to determine whether the death penalty is imposed. Other aspects of murder trials could also be shortened. For example, jury selection time for some trials could be reduced as it would no longer be necessary to remove potential jurors who are unwilling to impose the death penalty. Second, the elimination of the death penalty would reduce the costs incurred by counties for prosecutors and public defenders for some murder cases. This is because these agencies generally use more attorneys in cases where a death sentence is sought and incur greater expenses related to investigations and other preparations for the sentencing phase in such cases.

County Jails. County jail costs could also be reduced because of the measure's effect on murder trials. Persons held for trial on murder charges, particularly cases that could result in a death sentence, ordinarily remain in county jail until the completion of their trial and sentencing. As some murder cases are shortened due to the elimination of the death penalty, persons convicted of murder would be sent to state prison earlier than they otherwise would be. Such an outcome would reduce county jail costs and increase state prison costs.

Summary of Impacts Related to Murder Trials. In total, the measure could reduce annual state and county costs for murder trials by several tens of millions of dollars on a statewide basis. The actual reduction would depend on various factors, including the number of death penalty trials that would otherwise have occurred in the absence of the measure. In addition, the amount

of this reduction could be partially offset to the extent that the elimination of the death penalty reduced the incentive for offenders to plead guilty in exchange for a lesser sentence in some murder cases. If additional cases went to trial instead of being resolved through plea agreements, the state and counties would experience additional costs for support of courts, prosecution, and defense attorneys, as well as county jails. The extent to which this would occur is unknown. In most cases, the state and counties would likely redirect available resources resulting from the above cost reductions to other court and law enforcement activities.

Legal Challenges to Death Sentences

Over time, the measure would reduce state expenditures by the California Supreme Court and the state agencies participating in the legal challenges to death sentences. These reduced costs would reach about \$55 million annually. However, these reduced costs likely would be partially offset in the short run because some state expenditures would probably continue until the courts resolved all cases for inmates who previously received death sentences. In the long run, there would be relatively minor state and local costs—possibly totaling a couple million dollars annually—for hearing appeals from additional offenders receiving sentences of life without the possibility of parole.

State Prisons

The elimination of the death penalty would affect state prison costs in different ways. On the one hand, its elimination would result in a somewhat higher prison population and higher costs as formerly condemned inmates are sentenced to life without the possibility of parole. Given the length of time that inmates currently spend on death row, these costs would likely not be significant. On the other hand, these added costs likely would be more than offset by reduced costs from not housing hundreds of inmates on death row. As previously discussed, it is

generally more expensive to house an inmate under a death sentence than an inmate subject to life without the possibility of parole, due to the higher security measures used to house and supervise inmates sentenced to death.

The combined effect of these fiscal impacts would likely result in net state savings for the operation of the state's prison system in the low tens of millions of dollars annually. These savings, however, could be higher or lower depending on the rate of executions that would have otherwise occurred.

Other Fiscal Effects

Prison Construction. The measure could also affect future prison construction costs by allowing the state to avoid future facility costs associated with housing an increasing number of death row inmates. The extent of any such savings would depend on the future growth in the condemned inmate population, how the state chose to house condemned inmates in the future, and the future growth in the general prison population.

Effect on Murder Rate. To the extent that the prohibition on the use of the death penalty has an effect on the incidence of murder in California, the measure could affect state and local government criminal justice expenditures. The resulting fiscal impact, if any, is unknown and cannot be estimated.

Summary of Fiscal Impacts

In total, we estimate that this measure would reduce net state and county costs related to murder trials, legal challenges to death sentences, and prisons. These reduced costs would likely be around \$150 million annually within a few years. This reduction in costs could be higher or lower by tens of millions of dollars, depending on various factors.

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